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Supreme Court, U.S.
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In the Supreme Court of the United States

October Term, 1991

OCEAN DRILLING & EXPLORATION COMPANY (ODECO),
Petitioner

VERSUS

DIMENSIONAL OILFIELD SERVICES, INC.,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Whether maritime law governs a contract for wireline crew and services to a special-purpose vessel where said services directly concern, relate to, and aid the mission and function of the special-purpose vessel; and, if so, whether the United States Court of Appeals for the Fifth Circuit erred in applying state law to the ODECO/Dimensional contract for wireline crew and services to the special-purpose vessel, OCEAN CONQUEST.

LIST OF PARTIES

The following are parties to this proceeding:

Ocean Drilling & Exploration Company (ODECO)
Defendant-Petitioner[1]

Dimensional Oilfield Services, Inc.
Defendant-Respondent

Ronald and Annette Domingue
Plaintiffs

American Lloyds Insurance Company and Gulf Coast Well Testers, Inc.
Intervenors

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[1] Ocean Drilling & Exploration Company (ODECO) was the parent company of subsidiaries ODECO, Inc. and ODECO Oil and Gas Company, collectively referred to as ODECO. Presently, ODECO Oil and Gas Company operates two divisions - Drilling, and Oil and Gas Divisions. Ocean Drilling Services, Inc. and ODECO Drilling, Inc. are presently subsidiaries of ODECO Oil & Gas Company. On August 15, 1991, Ocean Drilling & Exploration Company changed its name to Murphy Exploration and Production Company.

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Petitioner respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the United

States Court of Appeals for the Fifth Circuit, entered in the above-entitled proceeding on February 11, 1991, with subsequent panel rehearing denial on August 9, 1991.

DECISIONS BELOW

The reported opinion of the United States Court of Appeals for the Fifth Circuit is reproduced in Appendix A. The denial of panel rehearing is reproduced in Appendix B.

The judgment of the United States District Court, Western District of Louisiana, is reproduced in Appendix C.

JURISDICTION

This matter has its origin in a lawsuit brought by plaintiffs, Ronald and Annette Domingue, against Ocean Drilling & Exploration Company (ODECO) in the United States District Court for the Western District of Louisiana. Plaintiffs asserted jurisdiction under 43 U.S.C.A. §1331 *et. seq.*, the Outer Continental Shelf Lands Act, and also invoked the district court's Admiralty and Maritime jurisdiction, alleging claims under general maritime law negligence and the unseaworthiness of the OCEAN CONQUEST.

This Petition seeks review of the Judgment of the United States Court of Appeals for the Fifth Circuit entered on February 11, 1991. Ocean Drilling & Exploration Company (ODECO), defendant-petitioner, petitioned the Fifth Circuit for panel rehearing and on August 9, 1991 the Court denied this request. The denial of the request for rehearing is reproduced in Appendix B.

This Petition is timely filed pursuant to Rule 13.4 of

the Rules of the Supreme Court of the United States. The jurisdiction of this court to review the Judgment of the Fifth Circuit is invoked under 29 U.S.C.A. §1254(1).

STATEMENT OF THE CASE

Ronald and Annette Domingue filed suit in the United States District Court for the Western District of Louisiana against Ocean Drilling & Exploration Company (hereinafter "ODECO") and Dimensional Oilfield Services, Inc. (hereinafter "Dimensional"). Ronald Domingue, a well-testing crewmember of Gulf Coast Well Testers, Inc., allegedly sustained injuries when he tripped and fell over a lubricator. The lubricator was a piece of equipment owned by Dimensional which the Dimensional crew had placed on the deck of the OCEAN CONQUEST. The OCEAN CONQUEST is a special-purpose vessel owned by ODECO and utilized in the offshore exploration and drilling of oil and gas.

On August 27, 1983, Dimensional entered into a service contract with ODECO to provide services for ODECO's oil and gas drilling & exploration operations. Pursuant to this contract, Dimensional agreed to "indemnify ODECO and hold ODECO harmless from and against any and all claims or demands brought against ODECO incident to, and arising out of, in connection with or resulting from the activities of Dimensional, or in connection with the work to be done by Dimensional, services to be performed, or materials and supplies to be furnished by Dimensional." [*See* Appendix D, A-17].

On or about September 9, 1987, the OCEAN CONQUEST was operating and performing its mission in waters outside the territorial limits of the State of Louisiana, on the Outer Continental Shelf. On or about

September 9, 1987, Dimensional received a "work order" from ODECO instructing Dimensional to furnish and provide a wireline crew and services to the OCEAN CONQUEST. The OCEAN CONQUEST required these wireline services in order to continue its mission and function in the specialized area of offshore oil and gas exploration and drilling.

As a result of plaintiff's suit, ODECO filed a cross-claim against Dimensional seeking full indemnity under the aforementioned contract/work order. Subsequently, ODECO filed a Motion for Summary Judgment seeking contractual indemnification from Dimensional. Dimensional filed a cross-motion on the same issue. The United States District Court for the Western District of Louisiana held that the contract was a maritime contract because the principal obligation under the contract was to provide wireline services to a vessel, thus contributing to the mission, function and operation of the OCEAN CONQUEST. [*See* Appendix C, A-15]. The district court entered a final judgment in favor of ODECO on the contractual indemnity issue and Dimensional appealed to the United States Court of Appeals for the Fifth Circuit.

The panel for the United States Court of Appeals for the Fifth Circuit reversed and remanded, holding that state law should apply to the ODECO/Dimensional contract. On August 9, 1991, the Fifth Circuit denied ODECO's request for Panel Rehearing and Suggestion for Rehearing *En Banc*.

REASONS WHY WRIT SHOULD BE GRANTED AND ARGUMENT

A.

THE APPLICATION OF STATE LAW TO THE ODECO/DIMENSIONAL CONTRACT FOR WIRELINE CREW AND SERVICES TO THE OCEAN CONQUEST IS IN APPARENT CONFLICT WITH SUPREME COURT PRECEDENT HOLDING THAT WORKERS, CONTRACTS AND SERVICES WHICH RELATE TO THE MISSION, FUNCTION AND OPERATION OF A VESSEL ARE MARITIME IN NATURE AND, THEREFORE, GOVERNED BY MARITIME LAW.

The Fifth Circuit's application of state law to the ODECO/Dimensional contract for wireline crew and services to the special-purpose vessel OCEAN CONQUEST deviates from the chartered course the United States Supreme Court has sailed from *Kossick*[2] to *Wilander*[3].

The ODECO/Dimensional contract and subsequent work order specifically provided crew and services to the OCEAN CONQUEST. These services furthered the mission and function of this special-purpose vessel, thus illustrating the maritime nature of the contract in question. Although the waters have been somewhat murky in seeking to determine the precise parameters of a maritime contract, courts have consistently characterized maritime contracts by focusing on the relationship of a particular contract to ships and vessels.

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[2] *Kossick v. United States Fruit Co.* 365 U.S. 731, 81 S. Ct. 886, 6 L.Ed. 2d 56 (1961).

[3] *McDermott International, Inc. v. Wilander,* ___ U.S. ___, 111 S. Ct. 809, 112 L.Ed. 2d 866, 1991 AMC 913 (1991).

In *Kossick v. United Fruit Co., supra,* the Supreme Court sought to establish the boundaries of maritime contracts and admiralty jurisdiction. The Court noted that the principle by which cases fall on one side of the line or the other is a broad one. However, the Court recognized that "the only question is whether the transaction relates to ships and vessels, masters and mariners, as the agents of commerce..." 6 L.Ed. 2d at 61. (citing, I *Benedict on Admiralty* §131). Justice Harlan further explained "we think that the alleged agreement was sufficiently related to peculiarly maritime concerns as not to put it, without more, beyond the pale of admiralty law." 6 L.Ed. 2d at 62. *See also, North Pacific S.S. Co. v. Hall Brothers Marine R. and Shipbuilding Co.,* 249 U.S. 119, 39 S. Ct. 221, 63 L.Ed. 510 (1919) [holding that the true criteria for interpreting whether maritime law applies to a particular contract is the nature of the contract and whether it has reference to maritime services or transactions].

More recently, the United States Supreme Court addressed the peculiarities of offshore oil and gas vessel operations in *McDermott International, Inc. v. Wilander, supra.* The Court, in addressing the question of seaman status under the Jones Act, 46 U.S.C.A. §688, highlighted the same principle applicable to the interpretation of contracts. *Wilander* held that an employee's duties give rise to seaman status where such duties contribute permanently or substantially to the function of a vessel or to the accomplishment of its mission. Likewise, this principle is applicable to the particular ODECO/Dimensional contract for services, in so far as these services directly concerned and contributed to the mission of the OCEAN CONQUEST.

Wilander sought to curtail the inconsistencies of the law with regard to seaman status. The Court was con-

cerned with the status of those workers particularly assigned to special-purpose vessels, whose work on vessels is different than the work performed by traditional seamen, i.e., navigation of a vessel.

The Court focused upon the employee's duties which contribute to the function and special mission of a vessel. *Wilander*, in its holding, cured the wayward case law which led the lower courts to a period of standards and lack of uniformity in administering the elements of seaman status. The principle in *Wilander* preserves a maritime remedy in terms of the claimant's "connection" with a vessel in navigation.

The ODECO/Dimensional contract, under which services were unquestionably performed in "connection" with a vessel in navigation, should likewise be interpreted by maritime law. To hold otherwise raises a serious dilemma - maritime law will apply to personal injury claims, while the underlying contractual obligations (pursuant to which work is being performed at the time of the alleged injury), will be interpreted by state law. In the ODECO/Dimensional situation, state law nullifies the transaction which allocated the risks under the contract and pursuant to which costs (i.e., insurance, day rates) were assessed and agreed upon by the parties.

The United States Court of Appeals for the Fifth Circuit has applied maritime law to service contracts peculiar to oil and gas offshore exploration and drilling. In fact, the Fifth Circuit has repeatedly held that certain contracts for services, which are not "inherently maritime", take on a "salty flavor" when they pertain to, focus upon, and affect a vessel in its operation. *See generally, Davis & Sons, Inc. v. Gulf Oil Corp.*, 919 F.2d 313 (5th Cir. 1990) [maintenance service provided to a barge gives rise to a maritime obligation]; *Stoot v. LeFleur Drilling Service*, 855 F.2d 1514 (5th

Cir. 1988) [catering contract on a drilling rig is maritime in nature]; *LeFleur v. Atlantic Richfield Co., Inc.*, 785 F.2d 1341 (5th Cir. 1986) [catering services onboard a rig are maritime in nature]; *Theriot v. Bay Drilling Co.*, 783 F.2d 527 (5th Cir. 1986) [maritime obligation arises when there is a direct link to the operations of a vessel]; *Cason v. Diamond M. Drilling Co.*, 441 So.2d 1221 (La. App. 1st Cir. 1983) [well services on a jack-up rig create a maritime contract] and *Corbitt v. Diamond M. Drilling Co.*, 654 F.2d 329 (5th Cir. 1981) [maritime law applicable to contract for casing crew on a drilling barge]. These cases appear to be in direct conflict with the application of state law to the ODECO/Dimensional contract and suggest that an apparent intracircuit conflict exists at the present time.

It is respectfully submitted that the body of law governing the personal injury claim of a plaintiff, whether it be a seaman permanently assigned to a vessel, or a general maritime negligence or unseaworthiness claim, should also govern contractual indemnity claims arising from the same accident in which the plaintiff claims to have sustained injuries. A contrary decision would create further conflicts and inconsistencies in this area of the law which *Wilander* sought to cure.

Finally, the Louisiana Supreme Court appears to be in conflict with the Fifth Circuit's application of state law to the ODECO/Dimensional contract. In *Rodrigue v. LeGros,* 563 So.2d 248 (La. 1990), the Louisiana Supreme Court reaffirmed that a contract for oil and gas drilling aboard a vessel in navigable waters is a maritime contract. In interpreting whether Louisiana law should apply to a contract for equipment and personnel for drilling of an oil well from a vessel located on navigable waters, the Louisiana Supreme Court held that maritime law would apply and that Louisiana law, namely, the Louisiana Oilfield

Anti-Indemnity Act, is inapplicable.

The United States Supreme Court, the Louisiana Supreme Court and many Fifth Circuit cases have consistently held that a contract is maritime when it relates to, or concerns, the mission or function of a vessel. In the instant case, the ODECO/Dimension contract clearly focuses on the furnishing of labor and services to the OCEAN CONQUEST. Without such labor and wireline services, the OCEAN CONQUEST could not function. There is a direct link between the ODECO/Dimensional contract and the operation of the OCEAN CONQUEST. It is not the location of where the services were performed which brings about a "salty flavor". Rather, the maritime nature of the ODECO/Dimensional contract is evident because the crew and services provided by Dimensional furthered the mission and function of the OCEAN CONQUEST.

B.

THE ODECO/DIMENSIONAL CONTRACT MUST BE KEPT AFLOAT IN ORDER TO MAINTAIN UNIFORMITY AND THE SUPREMACY OF MARITIME LAW

At the time of the adoption of the United States Constitution, the majority of commerce was maritime. Uniformity was traditional in maritime matters. This tradition served, and continues to serve, to minimize inconsistencies which may arise due to innumerable contacts with different ports and lands, and the need to preserve harmony between those who ply the oceans. The need for uniformity was one reason for the establishment of admiralty jurisdiction in 1789.

Uniformity is offended by the application of state

law to the ODECO/Dimensional contract. It must be remembered that the OCEAN CONQUEST is a special-purpose vessel, able to ply the high seas. Its location can deviate from off the coast of Louisiana to the coast of any state in the United States, as well as worldwide. The application of Louisiana law to the ODECO/Dimensional contract disrupts the goal of maintaining uniform law for the federal courts in commercial and maritime matters.

The need for uniformity is recognized as a principle akin to that of the supremacy clause. Traditionally, this Court has played a significant role in formulating a cohesive maritime law, and has taken further steps in *Wilander* to do so. As in *Wilander, supra*, this Court should consider and dictate the application of maritime law to the ODECO/Dimensional contract. It is incumbent upon the judiciary to apply maritime law with well-defined concreteness so as to not disturb uniformity. To apply state law to the ODECO/Dimension contract, which relates to the mission, function and operation of the OCEAN CONQUEST, disrupts uniformity and creates disparity in the law.

Wilander, supra, noted that wayward case law has led lower courts to a period of standards and lack of uniformity in administering the elements of seaman status. Seaman benefits should extend to those who permanently or substantially work on vessels in furtherance of the many purposes for which ships set to sea. In the interest of uniformity, contracts which relate and further the various unique purposes for which ships set to sea should also be governed by maritime law.

Finally, the Louisiana Supreme Court in *Rodrigue, supra*, further addressed the high priority in preserving uniformity in matters affecting interstate commerce.

Those who engage in maritime commercial activities should expect the application of uniform federal maritime law. *Rodrique, supra,* stressed the importance in applying federal maritime law and maintaining uniformity under the general maritime law.

The *Rodrigue* Court specifically addressed whether the Louisiana Oilfield Anti-Indemnity Act nullifies indemnity provisions in a contract dealing with specialty work performed within the offshore oil and gas industry. As the Court noted in *Rodrigue, supra,* "a justification for federal admiralty jurisdiction is the important national interest in uniformity of the law and of remedies for those facing the hazards of waterborne transportation." *Id.* at 254.

Balancing against the interest of the State of Louisiana in protecting state contractors with the federal maritime interest in uniformity and commercial transactions, *Rodrigue, supra,* held that "the maritime rule should prevail here ... the area of indemnity agreements has never been a special legislative province of this state." *Id.* at 254.

Accordingly, this Court should assume a major role in formulating a cohesive maritime law and maintaining the vitality of federal maritime law in the interest of uniformity and the orderly governance of maritime commerce.

CONCLUSION

It has consistently been held that drilling and oilfield related contracts are to be construed by admiralty law if the contract affects, concerns, or relates to the operation of a vessel. If there is a nexus between the subject matter of the contract, i.e., to provide services to a vessel in navigation, the nature of the contract is inherently maritime.

Where a contract for labor and/or services pertain to a vessel and its operation, convincing legal precedent brings a "salty flavor" to the contract.

The ODECO/Dimensional contract and work order directly relates to the furnishing of labor and services to the OCEAN CONQUEST. The work and services were not conducted on fixed platforms as enclaves of the state. There was a direct and proximate link between the contract/work order and the operation of the OCEAN CONQUEST.

Additionally, in the interest of uniformity and consistency, the Supreme Court should uphold the application of federal maritime law to contracts which directly affect the operation of the OCEAN CONQUEST as it sails the high seas. The validity of the ODECO/Dimensional agreement should be judged by one uniform law, regardless of where the vessel may sail.

The Supreme Court is the arbiter of matters of federal maritime law and should grant the petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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PROOF OF SERVICE

I, Timothy P. Hurley, attorney for the defendant-petitioner, and a member of the bar of the Supreme Court of the United States, hereby certify that on this day I have served copies of the foregoing petition for writ of certiorari on:

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by mailing a copy thereof, postage pre-paid and addressed to their respective offices, this ____ day of _____, 1991.

_____
TIMOTHY P. HURLEY

APPENDIX A

Ronald J. DOMINGUE, et al.,
Plaintiffs,

v.

OCEAN DRILLING AND EXPLORATION COMPANY,
Defendant-Appellee,

v.

DIMENSIONAL OILFIELD SERVICES, INC.,
Defendant-Appellant.

No. 90-4083.

United States Court of Appeals,
Fifth Circuit.

Feb. 11, 1991.

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Worker who was injured when he tripped over piece of equipment placed on deck of movable jackup drilling rig by contractor hired by oil company to perform wireline services brought action against oil company and contractor, and oil company filed cross claim against contractor seeking indemnity under broadform blanket agreement. The United States District Court for the Western District of Louisiana, Richard J. Putnam, J., entered judgment in favor of oil company on indemnity issue, and contractor appealed. The Court of Appeals, Brown, Circuit Judge, held that oil and gas exploration services contract between oil

company and servicer/contractor, consisting of broadform blanket agreement followed by specific work order covering performance of wireline services on movable jackup drilling rig, was not maritime in character, and thus application of state law was required to determine validity of indemnity provision in blanket agreement.

Reversed and remanded.

Appeal from the United States District Court for the Western District of Louisiana.

Before BROWN, POLITZ, and JOHNSON, Circuit Judges.

JOHN R. BROWN, Circuit Judge:

Once more we embark on a voyage through the familiar marshland area of the law set aside for classifying the oil and gas exploration services contract as wet or dry. In this case, as is commonplace in the oil and gas industry, the contract between the oil company and the servicer/contractor consists of two parts, a broadform blanket agreement followed by a later specific work order covering the specific work to be done, wireline services on a movable jackup drilling rig. The district court found that the contract was maritime in nature because the wireline services provided enabled the rig, which the law recognizes as a *Robison*-type vessel,[1] to "perform its function and mission as a jack up drilling barge." The court therefore adjudged the case to be governed by federal maritime law rather than Louisiana law, which would have invalidated the indemnity provision in the blanket agreement.

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[1] We have consistently applied general maritime law and the Jones Act guidelines set down by this Court through Judge Wisdom in *Offshore Co. v. Robison*, 266 F.2d 769 (5th Cir.1959), to accidents aboard special-

For this highly fact-specific inquiry, we apply the factors recently set forth for this Court through Judge Rubin in *Davis & Sons, Inc. v. Gulf Oil Corp.*, 919 F.2d 313 (5th Cir.1990), which leads to our conclusion that the contract for wireline services furnished in this case was not a maritime contract. State law, therefore, applies, and we reverse and remand.

How It All Began

On August 27, 1983, Dimensional Oil Services, Inc. (Dimensional) entered into a blanket service contract with Ocean Drilling and Exploration Company, Inc. (ODECO), to provide services to ODECO's extensive oil and gas drilling and exploration operations. Although denominated a contract, this document actually imposed no duties on either party. Instead it contemplated that the parties would later enter into a true contract, which, in addition to its specific terms, would embody the clauses set forth in the preliminary document, to avoid their repetition. It contained an indemnity provision whereby Dimensional agreed to "indemnify, defend and hold harmless [ODECO] from and against ... any and all claims, demands, or actions for damages to persons and/or property ..." while engaged in performing services for ODECO. As is the custom, at

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Footnote 1 continued.

purpose watercraft such as submersible, semi-submersible, jackup, and other similar rigs. As we stated in *Houston Oil & Minerals Corp. v. American Int'l Tool Co.*, 827 F.2d 1049, 1053 (5th Cir.1987):

> [w]e take as a given that in this circuit, at least in the area of personal injury, admiralty jurisdiction and the applicability of maritime law to these *Robison*-defined special-purpose watercraft is unassailably established.

See also, Vickers v. Chiles Drilling Co., 822 F.2d 535 (5th Cir.1987) (Jones Act and maritime law applied on jackup rig); *Wallace v. Oceaneering Int'l*, 727 F.2d 427 (5th Cir.1984) (semisubmersible bolted to Gulf floor is vessel for Jones Act purposes).

least in the offshore oil and gas industry, and as contemplated by Dimensional and ODECO, ODECO later issues written or verbal orders to Dimensional directing it to provide services on ODECO drilling rigs pursuant to the terms of the original document as modified by the work order. The blanket document supplemented by the later work order constituted the actual contract which was to cover each particular operation.[2]

On September 9, 1987, Dimensional received an oral work order instructing Dimensional to perform wireline services[3] on ODECO's jackup drilling rig, the OCEAN CONQUEST, on September 14-15, 1987. The rig was located 30 miles off the Louisiana coast on the outer continental shelf. Plaintiff Ronald Domingue, an employee of Gulf Coast Well Testers, Inc. (Gulf Coast), was performing well-testing work unrelated to Dimensional's wireline operation on September 14. He allegedly sustained injuries when he tripped and fell over a lubricator, a piece of equipment which the Dimensional crew had placed on the deck of the rig.

Domingue filed suit against ODECO complaining of improper working conditions. Later he joined Dimensional, which he alleged was also responsible for his physical injuries. ODECO filed a cross-claim against Dimensional seeking full indemnity under the 1983 blanket contract. In response Dimensional asserted that the Louisiana Oilfield

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[2] The blanket agreement states that it, "together with any applicable work order, shall control and govern all work accepted by [Dimensional] and shall define the rights and obligations of [ODECO] and [Dimensional]...."

[3] A team performing a wireline operation services partially drilled oil and gas wells and also gathers geophysical data relevant to production.

Indemnity Act (LOIA)[4] invalidated the indemnity clause in the contract. The parties each filed Motions for Summary Judgment on the indemnity issue. The trial court found that the wireline services contract was a maritime contract and therefore granted ODECO's summary judgment motion since acknowledged maritime law, unlike Louisiana state law, upholds the indemnity agreement. The court then entered F.R.Civ.P. 54(b) final judgment on its summary judgment order, allowing Dimensional to file this appeal.

A Salty Flavor?

This Court recently decided *Davis & Sons, Inc. v. Gulf Oil Corp., supra*, which examined the identical question before us today—whether an oil and gas exploration specialty services contract is maritime or non-maritime. *Davis* involved a situation identical in several respects to the one before us. Davis, a specialty services contractor, provided maintenance services to Gulf, a major oil and gas exploration company, pursuant to a specific work request under a blanket contract. The blanket contract included an indemnity clause by which Davis indemnified Gulf for physical injury and other claims arising from the contractor's performance. 919 F.2d at 314. A supervisor drowned while performing work under the contract, and his representatives sued Gulf and Davis. After the wrongful death claims were settled, Davis brought a declaratory judgment action against Gulf contending that the LOIA voided the indemnity clause in its blanket contract with Gulf. Construing the blanket agreement and the specific work order together, this Court held that the contract was maritime in nature and upheld the indemnity clause. *Id.* at 317.

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[4] La.Rev.Stat.Ann. § 9:2780 (West 1990.

Davis is dissimilar from the instant case in two major respects. First, the claims for which Gulf sought indemnity were made by representatives of the decedent, who was an employee of Davis, the contractor itself. In the instant case, the claimant was not employed by Dimensional and his work on the OCEAN CONQUEST was unrelated to Dimensional's wirline operation. An even more significant difference is the fact that the work order required that Davis provide labor to perform maintenance work on the wellheads, flow lines, storage tank batteries, and related production equipment "primarily through the use of self-propelled work barges...." *Id.* at 314. The contractor's crew would travel aboard the work barge which would be anchored to the work location before the maintenance work could begin. *Id.* In fact, work orders were often carried out on the barge itself, including the work which gave rise to the action. *See id.* In contrast, Dimensional supplies no vessel as such when executing an ODECO work order. Of course, as we discuss below, jack-up rigs such as the OCEAN CONQUEST (furnished and owned by ODECO), on which the wireline operation was executed, have often been judicially characterized as vessels.

Maritime/Non-Maritime Guidelines

In reaching its determination that maritime law governed that case, the *Davis* Court set forth six factors which it crystalized from this Circuit's jurisprudence directing the fact-specific inquiry whether the contract is maritime or non-maritime. In the Court's words, these factors are:

1) What does the specific work order in effect at the time of injury provide?

2) What work did the crew assigned under the work order actually do?

3) Was the crew assigned to work aboard a vessel in navigable waters?

4) To what extent did the work being done relate to the mission of that vessel?

5) What was the principal work of the injured worker?

6) What work was the injured worker actually doing at the time of injury?

Id. at 316. The *Davis* factors guide the present inquiry because we must read the Dimensional-ODECO blanket agreement modified by the later work order together as the actual contract and determine whether it is maritime or non-maritime in character.

Factor (1) The Specific Work Order. Dimensional's sole obligation under the September 9, 1987, work order which Dimensional received via telephone from ODECO was to provide wireline services aboard the OCEAN CONQUEST. ODECO did not request that Dimensional perform any other services pursuant to this particular work order. *Factor (2) The Actual Work Performed.* Dimensional actually performed a wireline operation aboard the OCEAN CONQUEST on September 14-15, 1987. It is undisputed that the Dimensional crew performed only wireline services and no other work while aboard the ODECO rig. *Factor (3) Aboard a Vessel?* It is also clear that the work was performed exclusively on the OCEAN CONQUEST, a movable jackup drilling unit located 30 miles off the Louisiana coast in the Gulf of Mexico. Such a rig has been characterized as a vessel by this Court.[5]

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[5] *See supra* note 1.

Factor (4) Relationship of the Work to the Mission of the Vessel. It should no longer be open to dispute that wireline services are peculiar to the oil and gas industry and, viewed apart from the circumstances under which they are performed, are distinctly non-maritime in nature. *Thurmond v. Delta Well Surveyors,* 836 F.2d 952, 955-56 (5th Cir.1988).[6] Further, the situs of performance of a wireline operation does not definitively categorize it. As *Davis* prescribes, whether a contract is or is not maritime depends on the " 'nature and character of the contract' rather than on its place of execution or performance." 919 F.2d at 316 (quoting *North Pacific S.S. Co. v. Hall Bros. Marine Ry. & Shipbuilding Co.,* 249 U.S. 119, 125, 39 S.Ct.

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[6] *Thurmond,* decided in 1988, did not mention this Court's earlier decisions in *Pippen v. Shell Oil Co.,* 661 F.2d 378 (5th Cir.1981), and the related en banc decision in *Boudreaux v. American Workover, Inc.,* 664 F.2d 463 (5th Cir. Unit A 1981), *reh'g en banc,* 680 F.2d 1034 (5th Cir. Unit A 1982), *cert. denied,* 459 U.S. 1170, 103 S.Ct. 815, 74 L.Ed.2d 1014 (1983). This Court expressly held in *Pippen* that offshore wireline services were maritime in nature:

> Since offshore drilling ... is maritime commerce, it follows that the purpose of Pippen's [wireline operations] work was to facilitate maritime commerce.... [W]e are therefore compelled to conclude that the work performed by Pippen had a realistically significant relationship to maritime commerce. Thus, Pippen was engaged in maritime employment at the time of his injury.

661 F.2d at 384 (footnotes omitted). *Accord, Boudreaux,* 680 F.2d at 1052.

The vitality of the *Pippen-Boudreaux* holdings may continue to be in doubt after the Supreme Court's decision in *Herb's Welding, Inc. v. Gray,* 470 U.S. 414, 105 S.Ct. 1421, 84 L.Ed.2d 406 (1985), since in *Herb's Welding* the Court rejected this Circuit's "expansive view of maritime employment" in decisions such as *Pippen* and *Boudreaux. See id.* at 418-19, 105 S.Ct. at 1424-25, 84 L.Ed.2d at 411 (citing *Pippen*). *See also, id.* at 423, 105 S.Ct. at 1427, 84 L.Ed.2d at 414 ("[t]here is nothing inherently maritime about" building and maintaining pipes and platforms on the outer continental shelf). In *Theriot v. Bay Drilling Corp.,* 783 F.2d 527, 539 n. 11 (5th Cir.1986), the Fifth Circuit determined that *Herb's Welding* presented no conflict with the facts of that particular case. *But see, Union Texas Petroleum Corp. v. PLT Eng'g, Inc.,* 895 F.2d 1043, 1049 n. 10 (5th Cir.1990).

221, 223, 63 L.Ed. 510, 512 (1919)). The Dimensional-ODECO contract does not become maritime simply because the wireline services were performed aboard the drilling rig vessel. A specialty services contract related to oil and gas exploration and drilling takes on a salty flavor when the performance of the contract is more than incidentally related to the execution of the vessel's mission.

We pointed out the distinction between a contract which sufficiently touched the operation of a vessesl to attain maritime status and one that did not in *Thurmond.* In that case, wireline operators P & S Well Services and Delta Well Surveyors contracted with Gulf Oil to perform wireline services on Gulf's offshore wells in the Louisiana delta. Through a provision in blanket contract P & S and Delta indemnified Gulf for personal injury or property damage claims arising out of work performed under the contract. P & S provided a work barge and crew to perform the wireline services assigned by Gulf.

On one such assignment, Thurmond, a Delta employee, suffered injuries when he stepped from the P & S barge onto the well head and part of a motor valve popped off, striking him on the chin. Thurmond brought suit against Gulf, which cross-claimed against P & S and Delta, arguing that maritime law should apply to give the indemnity provision full effect. Gulf asserted that the predominant obligation under the contract was to provide a barge and crew with wireline equipment. We determined that the use of the work barge was only incidental to the performance of the contract, however, and held that Louisiana law governed the indemnity provision. 836 F.2d at 956. Although the contract might have ever "contemplate[d] the hiring of vessels and seamen" to carry out the services, because the use of a vessel was, at best, incidental to the performance of the contract, it was "clearly

a nonmaritime obligation." *Id.* at 955.

Thurmond distinguished *Theriot v. Bay Drilling Corp.*, 783 F.2d 527 (5th Cir.1986), where we determined that a contract to furnish the equipment materials, supplies, and services necessary to drill an oil well was maritime because the supply of a vessel was central to the contract: "the main piece of equipment to be supplied by Bay Drilling was a vessel...." Therefore, the contract "did not merely touch incidentally on a vessel but directly addressed [its] use and operation...." *Id.* at 538. In contrast, the contracts in *Thurmond* and in this case did not require that the contractor provide a vessel.

ODECO also argues that the fact that Dimensional performed wireline services under this contract on a jackup drilling rig, as opposed to a fixed platform, requires the application of maritime law. *Thurmond* and *Davis* are clear, however, that such a circumstance is not controlling.[7] The injured employee in *Thurmond*, for instance, had stepped from the transportation barge to the fixed oil well platform at the moment that the wellhead exploded and parts of it struck him causing his injury. 836 F.2d at 953. To suggest, as ODECO does, that *Thurmond* is distinguishable because there the work was being performed on a fixed

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[7] Compare the present situation to *Davis*, 919 F.2d at 317, where we held that the transportation function of a barge which served as a mobile maintenance unit for a work crew which performed its work predominatly aboard the barge "was more than 'merely incidental' to its primary purpose of serving as a work platform." We stated:

> The mission of this vessel, therefore, was to serve as a mobile maintenance unit....The work done by the crew of Barge 11171 was inextricably intertwined with maritime activities since it required the use of a vessel and its crew.

(quoting *Brunet v. Boh Bros. Constr. Corp.*, 715 F.2d 196, 198 (5th Cir.1983)).

platform and not a vessel inevitably leads to the universally rejected contention of situs—that the contract would have been a maritime contract had the plaintiff stepped back onto the barge to do work there when flying objects from the explosion aboard the platform caused his injury.[8] On the contrary, the fact that the OCEAN CONQUEST is a vessel does not decisively affect the nature or character of the Dimensional-ODECO contract. The fact of the OCEAN CONQUEST's being a vessel is nothing more than incidental to its purpose here of serving as a work platform for the execution of this particular service contract.[9]

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[8] *See id.* at 316 (whether contract is or is not maritime depends upon its "nature and character ... rather than on its place of execution or performance"). *See also, Kossick v. United Fruit Co.*, 365 U.S. 731, 735, 81 S.Ct. 886, 889, 6 L.Ed.2d 56, 60 (1961); *Theriot*, 783 F.2d at 538.

[9] Though often cited by partisans in these controversies (and less often in our own simliar cases), this case being no exception, *Sohyde Drilling & Marine Co. v. Coastal State Gas Prod. Co.*, 644 F.2d 1132 (5th Cir.1981), really has nothing to do with the primary question before us. We mention it here merely to declare this fact. The question in *Sohyde* was not whether there existed a maritime contract. The only question was whether there was admiralty jurisdiction (through Extension of the Admiralty Act, 46 U.S.C.App. § 740) for a tort claim of damage principally to the oil bearing structure of an oil well occasioned by a well blowout. Expenses generated by the blowout were incurred in subsequent attempts to control the blowout and repair surface facilities at the well, to achieve partial production of reserves from a relief well, and to plug the origingal well. *Id.* at 1138. On then-existing admiralty principles of torts occurring on navigable waters, admiralty jurisdiction was plainly present. *Id.* at 1135. The new and only wrinkle was the impact of *Executive Jet Aviation, Inc. v. City of Cleveland, Ohio*, 409 U.S. 249, 93 S.Ct. 493, 34 L.Ed.2d 454 (1972), which required that the injury for which there is a claimed tort recovery bear a significant relationship to maritime activity. On the basis of *Executive Jet*, we held that the district court had improperly assumed that admiralty jurisdiction applied to the tort claims. *Sohyde*, 644 F.2d at 1138. *See also, Pippen*, 661 F.2d at 384 n. 10 (*Sohyde* unrelated to issue of whether work under oil and gas services contract bears significant relationship to maritime activity).

Factors (5) & (6) The Work of the Injured Employee. In addition to considering the role of the specialty services contract in relation to the mission of the vessel, *Davis* requires that we inquire into the principal work of the injured worker. *Davis* factors (5) and (6) assume that the injured worker was employed by Davis, the specialty services contractor performing work under the two-part contract in dispute. Under *Davis*, the principal work of the injured party is relevant in aiding the Court's construction of the service contract in question. Although obligatory to the *Davis* analysis, these factors cannot be applied literally to determine the nature of the ODECO-Dimensional contract. *Davis* looks to the work of the employee engaged to execute the contract whose nature is in question, that is, in this instance, the work of the Dimensional employees. Since Domingue was neither hired by Dimensional nor engaged in performing work required of that company, it would be immaterial to the nature of the Dimensional contract whether his work was or was not maritime. He was an employee of Gulf Coast in a completely unrelated well-testing operation aboard the OCEAN CONQUEST. As emphasized above, this situation is different from the context present in *Davis*, and the nature of his work has little, if any, relevance.

Left with the Dimensioanl-ODECO contract and the undisputed fact that Dimensional was to, and did, perform wireline services exclusively, we hold that this case is controlled by *Thurmond*, and the service contract is therefore non-maritime. Accordingly, LOIA controls to invalidate the indemnity provision of the blanket contract. We REVERSE the district court's grant of summary judgment to ODECO with directions to grant Dimensional's motion for summary judgment, and REMAND for further action consistent with this opinion.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 90-4083

FILED
AUG 09 1991

RONALD J. DOMINGUE, ET AL.,
Plaintiffs,

v.

OCEAN DRILLING & EXPLORATION COMPANY,
Defendant-Appellee,

v.

DIMENSIONAL OILFIELD SERVICES, INC.,
Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana

(August 9, 1991)

ON PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING EN BANC

(Opinion February 11, 1991, 5th Cir. 1991, ____ F.2d ____)

BEFORE BROWN, POLITZ, and JOHNSON, Circuit Judges.

PER CURIAM:

In its petition for rehearing, Ocean Drilling and Exploration Company (ODECO) suggests that we "misapprehended the facts" in the case upon which we rely, *Davis & Sons, Inc. v. Gulf Oil Corp.*, 919 F.2d 313 (5th Cir. 1990), "incorrectly interpreting that the [*Davis*] barge, Barge No. 11171 was 'supplied' with the services in question[,]" when it was in fact a Gulf barge. In *Davis* the Court found the contract to be maritime based on several factors. Prior to discussing the various factors as they apply to the instant case, we stated that *Domingue* was distinct from *Davis* in part because Dismensional "supplies no vessel as such when executing an ODECO work order." *Domingue*, 923 F.2d 393, 395 (5th Cir. 1991). ODECO appears to be correct in its assertion that the *Davis* barge was not supplied by the contractor but was a Gulf barge. This error does not change our analysis or result, however.

Except as herein granted, the petition for rehearing is DENIED, and no member of this panel nor judge in regular active service having requested that the court be polled on rehearing en banc (F.R.App.P. 35 and Fifth Cir. Loc. R. 35), the suggestion for rehearing en banc is DENIED.

APPENDIX C

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE-OPELOUSAS DIVISION

FILED
Nov 29 1989

RONALD J. DOMINGUE and ANNETTE LEGER DOMINGUE	*	CIVIL ACTION NO. 88-2182
	*	JUDGE UNAS-
VERSUS	*	SIGNED - "L"
	*	
OCEAN DRILLING & EXPLORATION COMPANY (ODECO)	*	MAGISTRATE TYNES

J U D G M E N T

Before the Court for consideration are Motions for Summary Judgment filed by defendant and cross-claimant, Ocean Drilling & Exploration Company ("ODECO"), and defendant and cross-defendant, Dimensional Oilfield Services, Inc. ("Dimensional"), on the issue of application and enforceability of contractual idemnification in the "Master Service Contract" entered into by these parties.

The Court finds that the contract between ODECO and Dimensional is maritime in nature since the wireline service performed by Dimensional involved maritime obligations i.e., it enabled the vessel "Ocean Conquest" to perform its function and mission as a jack up drilling barge. Since the Louisiana Oilfield Anti-Indemnity Act

does not apply to such a maritime contract involving a vessel located beyond Louisiana's territorial waters, the indemnity provision of the Master Service Contract is enforceable. It is governed by federal maritime law and the Louisiana Oilfield Anti Indemnity Act, La. R.S. 9:2780, does not apply.

The *Thurmond* case cited by ODECO in its Memoranda is distinguishable since it involved wireline services performed on a fixed platform, not a vessel as in the instant case, in a situation where Louisiana law is made expressly applicable by the Outer Continental Shelf Lands Act.

Accordingly, the Motion for Summary Judgment of ODECO is GRANTED and it is entitled to full indemnity in accordance with the terms of the Master Service Agreement. The Motion for Summary Judgment of Dimensional is DENIED.

JUDGMENT SIGNED AND FILED this 28 day of November, 1989.

/s/ Illegible

UNITED STATES SENIOR DISTRICT JUDGE

Judgment Entered - 12-4-89
By - Suzanne Mitchell
Copy To - Conery
Maginnis Hurley
Broussard
Mahtook

APPENDIX D

O D E C O

MASTER SERVICE CONTRACT

THIS AGREEMENT, effective this 27th day of August A.D. 1983, by and between OCEAN DRILLING & EXPLORATION COMPANY, ODECO INC., ODECO OIL & GAS COMPANY, ODECO ENGINEERS INC., and SUB SEA INTERNATIONAL INC., and on behalf of their subsidiary and affiliated companies, owners, co-owners and joint venturers associated therewith, and any of their agents, directors, officers and employees, hereinafter collectively referred to as "Company" and Dimensional Oilfield Services, Inc., P. O. Box 64 - Houma, LA 70360, hereinafter referred to as "Contractor".

WITNESSETH: THAT

WHEREAS, Company is engaged in numerous business activities including but not limited to the drilling of exploratory and development wells seeking and producing oil and gas or other minerals for itself or for the account of others and diving services: and

WHEREAS, Company or other parties for whom or with whom Company is working may desire the services of Contractor: and

WHEREAS, Contractor represents that it has adequate equipment in good working order and fully trained personnel capable of efficiently operating such equipment and performing services in a safe, proper and workmanlike manner for Company or others as aforesaid:

NOW THEREFORE:

In consideration of the mutual promises and convenants herein contained, the parties hereto mutually agree as follows:

(1) (a) This agreement shall control and govern all activities of Contractor in connection with the performance of all work by Contractor for Company under work orders, oral or written, given on or after the date hereof by Company to Contractor.

(b) With respect to any work performed by Contractor pursuant to contracts or work orders with parties other than Company on any drilling barges, vessels, platforms, installations or other property of any kind owned by, leased to, chartered to, or under the control of Company, Paragraphs (8), (9), (10) and (11) of this Contract shall be applicable as between Contractor and Company with respect to the work so performed.

(c) This agreement shall remain in effect until canceled by either party by giving the other party ten (10) days written notice to that effect at the respective addresses herein set forth; provided, however, that with respect to any work in progress as of the date of the cancellation, this agreeement shall continue in effect until the work be completed.

(2) Upon the acceptance by Contractor of any work order for services and/or equipment, Contractor will furnish same at the time agreed upon, and continue operations diligently and without delay, in a safe, proper and workmanlike manner, in strick conformity with the specifications and requirements contained herein and in such work order., subject, however, to Paragraphs (3), (4) and (5) hereof.

(3) This Contract does not obligate Company to order work and/or equipment or materials from Contractor, nor does it obligate Contractor to accept such orders, but it, together with any applicable work order, shall control and govern all work accepted by Contractor and shall define the rights and obligations of Company and Contractor, during the term hereof.

(4) Company and Contractor respectively agree to comply with all laws, rules and regulations. Federal, State and municipal, which are now or may become applicable to operations covered by this agreement and any work order issued in connection herewith. If any of the terms hereof are in conflict with any applicable rule, regulation, order or law of a State or Federal Regulatory Body, the terms of this Contract so in conflict shall not apply and the applicable State or Federal rule, regulation, order or law shall prevail.

(5) Neither Company nor Contractor shall be liable to the other for any delays or damages or any failure to act due, occasioned, or caused by reason of Federal or State laws or the rules, regulations or orders of any public body or official purporting to exercise authority or control respecting the operations covered hereby, including the use of tools and equipment, or due, occasioned, or caused by strikes, action of the elements, or causes beyond the control of the parties affected hereby, and delays due to the above cause, or any of them, shall not be deemed to be a breach of or failure to perform under this agreement.

(6) The Company shall pay Contractor for the work and/or equipment or materials furnished by Contractor at the rate stipulated in the work orders provided for herein, subject to same being accepted by Company as fully complying with all the terms, conditions, specifications and

requirements of this Contract and such work orders; provided Contractor shall have satisfied Company that there are no liens or claims on or against Company or its property by reason of the operations of Contractor hereunder.

(7) Delivery tickets covering any materials or suplies furnished by vendors for which Company is obligated to reimburse Contractor, shall be turned in to Company as received. The quantity, description, and condition of materials and supplies so furnished shall be verified and checked by Contractor, and such delivery tickets shall be properly certified as to receipt by Contractor's representative.

(8) At any and all times during the term of this agreement, Contractor agrees to carry insurance of the types and in the minimum amounts as follows. The insurance requirements set forth herein are supplementary to and shall not limit or restrict as to amount, extent or otherwise the indemnity obligations undertaken by contractor in Paragraph 9 hereof.

(a) Workmen's Compensation insurance in full compliance with all applicable State and Federal laws and regulations.

(b) Employers' Liability insurance in the minimum limits of $300,000 per accident covering injury or death to any employee which may be outside the scope of the workmen's compensation statute of the state in which the work is performed.

(c) Comprehensive General Liability insurance with minimum limits of $300,000 for injury to or death of any one person and $500,000 for any one accident and with minimum limits of $300,000 for property damage. Such insurance shall specifically cover the contractual liabilities and indemnities herein assumed by Contractor.

(e) Excess Liability insurance in the amount of $2,000,000 above the coverages specified in (a) through (d) above.

(Add Marine Insurance Clause if Required)

(f)_____

_____

(g) All such policies shall be carried in a company or companies acceptable to Company and shall be maintained in full force and effect during the term of this agreement and shall not be canceled, altered or amended without 30 days prior written notice having been furnished to Company. All policies of Contractor, whether specifically required above or not shall be endorsed to Waive Subrogation against Company and against all parties for whom Company may be working and with the exception of Workmen's Compensation shall name Company and all parties for whom Company may be working as an Additional Assured. All such policies shall be endorsed to provide that they are primary insurance with respect to any insurances carried by Company, and that any "Other Insurance Clause" contained in Contractor's insurances shall be void and inoperative as to Company. Contractor shall furnish Company with a certificate or certificates evidencing the insurance coverages above required, and upon request shall furnish Company certified copies of all such policies.

(9) It is agreed and understood that it is in the best interest of the parties that certain risks of the enterprise in which they are engaged should be identified and allocated as between them. It is, therefore, the intent of this paragraph to provide for indemnity to the maximum extent permitted by law and to support such indemnity by liability insurance coverage to be furnished by the indemnitor.

Contractor agrees to indemnify, defend and hold harmless Company from and against all liens and claims for labor or material, and against any and all claims, demands, or actions for damages to persons and/or property (including, but not limited to claims, demands, or actions for bodily injury, illness, disease, death, loss of service, loss of society, maintenance, cure, wages, or property), which may be brought against Company [including, but not limited to such claims, demands, or actions brought by Contractor's employees and agents and the employees and agents of its subcontractors; by way of illustration, but not by way of limitation, any person who is on Contractor's payroll and receives, has received, or is entitled to receive payment from Contractor in connection with any work performed or to be performed hereunder shall be the employee of Contractor for purposes of this Paragraph (9)] incident to, arising out of, in connection with, or resulting from the activities of Contracor, its employees and agents or its subcontractors and their employees and agents, or in connection with the work to be done, services to be performed or material to be furnished under this Contract or under contracts referred to in Paragraph (1) (b) above, whether occasioned, brought about, or caused in whole or in part by the negligence of Company its agents, employees, officers, directors, or subcontractors or otherwise, or by the unseaworthiness of any vessel owned, operated, or contracted by the Company or by any defective condition of any equipment of Company (whether or not existing prior to the date of this agreement), regardless of whether such negligence, unseaworthiness or defective condition be active or passive, primary or secondary.

(10) Company shall not be liable for damages to or destruction of Contractor's surface equipment or materials even though such damage may be caused in whole or in

part by the negligence of Company, its agents, directors, officers, employees, servants, subcontractors or otherwise or by the unseaworthiness of any vessel owned, operated or controlled by Company.

(11) Contractor shall report to Company as soon as practicable all accidents or occurrences resulting in injuries to Contractor's employees or third parties, or damage to property of third parties, arising out of or during the course of services for the Company or under contracts referred to in Paragraph (1) (b) above by Contractor or of any subcontractor of Contractor, and, when requested, shall furnish Company with a copy of reports made by Contractor to Contractor's insurer or to others of such accidents and occurences including statement or any other investigative material.

(12) Contractor agrees to pay all taxes, licenses, and fees levied or assessed on Contractor in connection with or incident to the performance of this Contract by any governmental agency and unemployment compensation insurance, old age benefits, social security, or any other taxes upon the wages of Contractor, its agents, employees and representatives. Contractor agrees to require the same agreements and to be liable for any breach of such agreements by any of its subcontractors. Contractor agrees to reimburse Company on demand for all such taxes or governmental charges, State or Federal, which Company may be required or deem it necessary to pay on account of employees of Contractor or its subcontractors. Contractor agrees to furnish Company with the information required to enable it to make the necessary reports and to pay such taxes or charges. At its election, Company is authorized to deduct all sums so paid for such taxes and governmental charges from such amounts as may be or become due to Contractor hereunder.

(13) Contractor shall be an independent contractor with respect to the performance of all work hereunder, and neither Contractor nor anyone employed by Contractor shall be deemed for any purpose to be the employee, agent, servant, or representative of Company in the performance of any work or service or part thereof in any manner dealt with hereunder. Company shall have no direction or control of the Contractor or its employees and agents except in the results to be obtained. The work contemplated herein shall meet the approval of Company and be subject to the general right of inspection for Company to secure the satisfactory completion hereof. The actual performance and superintendence of all work hereunder shall be by Contractor, but Company or its representatives shall have unlimited access to the operations to determine whether work is being performed by Contractor in accordance with all the provisions of this Contract and the work order.

(14) In addition to all other indemnifying provisions contained herein, Contractor represents and warrants that the use or construction of any and all tools and equipment furnished by Contractor and used in the work provided for herein does not infringe on any license or patent which has been issued or applied for, and Contractor agrees to indemnify and hold Company harmless from any and all claims, demands, and causes of action of every kind and character in favor of or made by any patentee, licensee, or claimant of any right or priority to such tool or equipment, or the use or construction thereof, which may result from or arise out of furnishing or use of any such tool or equipment by Contractor in connection with the work under this agreement and applicable work orders.

(15) In the event there is a conflict between the provisions hereof and any papers or documents, which may have been executed or passed between the parties hereto in con-

nection with the subject matter hereof, it is understood and agreed that the provisions hereof shall be controlling. It is expressly understood and agreed by the parties hereto that no provision or any delivery ticket, device or other instrument used by Contractor in setting forth the operations conducted hereunder shall supersede the provisions of this agreement.

(16) Time is expressly declared to be the essence of this Contract. If either party hereto defaults in the performance of this Contract, or of work commenced under work orders as provided for herein, the other party has the option to teminate this Contract and the work order involved.

(17) No waiver by Company of any of the terms, provisions or conditions hereof shall be effective unless said waiver shall be in writing and signed by an authorized representative of Company.

(18) All notices to be given with respect to this Contract and applicable work orders unless otherwise provided for shall be given to the Company at:

P.O. Box 61780
New Orleans, Louisiana 70161

and to the Contractor at the address hereinabove shown. All sums payable hereunder to Contractor shall be payable at Contractor's address above unless otherwise specified herein or in the applicable work order.

(19) As a part of the consideration for this agreement, Contractor hereby agrees that the provisions of Paragraphs (8) Insurance, (9) Indemnity, (10) Loss of Contractor's Equipment and (14) Patent Infringement shall extend to and be enforceable by and for the benefit of any Owner or Operator for whom Company is performing operations or services.

(20) The provisions hereof shall extend to and apply to situations where Company is engaged in any operations including as a drilling contractor, as an operator, as a diving contractor, and as an owner or co-owner of oil and gas properties upon which the work contemplated hereunder is being performed.

(21) Except to the extent that this agreement and the work performed hereunder may be exempt therefrom, Contractor agrees to comply with the provisions of all applicable State and Federal requirements and regulations on hiring practices and employment including but not limited to those set forth in Exhibit "A" attached hereto and hereby made a part of this Contract to the same extent as if incorporated in the body of this agreement.

(22) This agreement shall be applied and interpreted under the General Maritime Laws of the United States.

WITNESSES:

OCEAN DRILLING & EXPLORATION COMPANY

/s/ Sonia Baralt
/s/ Suzanne Luter

By:/s/ illegible

ODECO INC.

/s/ Sonia Baralt
/s/ Suzanne Luter

By:/s/ illegible

ODECO OIL & GAS COMPANY

/s/ Sonia Baralt
/s/ Suzanne Luter

By:/s/ illegible

ODECO ENGINEERS INC.

/s/ Sonia Baralt
/s/ Suzanne Luter

/s/ illegible

SUB SEA INTERNATIONAL INC.

/s/ Mary C. Gills

/s/ Kathy S. Rodriguez

By: /s/ illegible

Dimensional Oil field Services, Inc.

/s/ Ben Brach

/s/ illegible

By:/s/ illegible

CONTRACTOR

APENDIX E

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE-OPELOUSAS DIVISION

FILED
JUN 27 1989

RONALD J. DOMINGUE AND ANNETTE LEGER DOMINGUE	CIVIL ACTION NO: 88-2181
VERSUS	SECTION: L
OCEAN DRILLING & EXPLORATION COMPANY (ODECO)	JUDGE PUTNAM MAGISTRATE OVERCASH

* * * * * * * * * * * * * * * * * * * *

STATEMENT OF UNCONTESTED MATERIAL FACTS

NOW INTO COURT, through undersigned counsel, comes cross-defendant, Dimensional Oilfield Services, Inc., who, in its statement of uncontested material facts, avers as follows:

I.

On September 9, 1987, Dimensional Oilfield Services, Inc. received a telephone request from Mr. Don Badon of ODECO to provide services upon the Ocean Conquest.

II.

The services requested by Mr. Badon were actually performed on September 14, 1987 and September 15, 1987.

III.

The services provided by Dimensional Oilfield Services, Inc. on the Ocean Conquest pursuant to the master service contract and the telephone request by Mr. Badon involved exclusively the providing of wireline services.

The activities being performed by Dimensional were in no way connected with, related to or a part of the services being provided by Gulf Coast Well Testers, the employer of plaintiff herein.

Respectfully submitted,

BROUSSARD & DAVID
(A Professional Law Corporation)

BY: /s/ Hal J. Broussard

HAL J. BROUSSARD (-3516)
PAUL B. DAVID
P.O. Box 5256
Lafayette, LA 70502
318/237-0672

Attorney for Dimensional
Oilfield Services, Inc.

Supreme Court, U.S.
FILED
DEC 4 1991
OFFICE OF THE CLERK

NO. 91-747 (2)

In the Supreme Court of the United States

October Term, 1991

OCEAN DRILLING & EXPLORATION COMPANY (ODECO),
Petitioner

v.

DIMENSIONAL OILFIELD SERVICES, INC.,
Respondent

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

HAL J. BROUSSARD
Counsel of Record
La. Bar Roll No. 3516
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IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1991

OCEAN DRILLING & EXPLORATION COMPANY (ODECO),

Petitioner

v.

DIMENSIONAL OILFIELD SERVICES, INC.,

Respondent

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Respondent respectfully prays that petitioner's application for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled proceeding on February 11, 1991, with subsequent panel rehearing denial on August 9, 1991, be denied.

STATEMENT OF THE CASE

In the interest of brevity, and pursuant to Supreme Court Rule 24.2, Respondent adds the following particular facts.

On August 27, 1983, Dimensional[1] and ODECO entered into a Master Service Agreement for the provision of services to ODECO's oil and gas drilling and exploration operations. Unlike the traditional scheme of offshore exploration, ODECO occupied the position of both the operator and the drilling contractor. Pursuant to that master agreement, ODECO, as operator, issued a work order to Dimensional, on or about September 9, 1987, for the provision of wireline services in connection with ODECO's development of an oil and gas well on the Outer Continental Shelf. This contract between ODECO and Dimensional was not a vessel charter. Dimensional's principal obligation under the contract was to provide wireline services to the well, not to contribute to the function of a vessel.

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[1]Dimensional Oilfield Services, Inc. is a privately owned singular entity with no subsidiaries or parent company.

SUMMARY OF THE ARGUMENT

The Fifth Circuit's application of state law to the ODECO/Dimensional contract for wireline services is consistent with prior holdings of the United States Supreme Court relating to the non-maritime nature of oil and gas activities, and to the characterization of contracts pertaining to such activities.

The nature of a non-maritime activity is not altered by the incidental presence of a vessel. Wireline services are peculiar to the oil and gas industry and are therefore non-maritime in nature. Such contracts are better enforced under state law.

A writ of certiorari to the United States Court of Appeals for the Fifth Circuit is unnecessary in the absence of a conflict between the existing law and the holding at issue. The Fifth Circuit and the Louisiana Supreme Court have uniformly ruled that whether a particular contract can be characterized as maritime depends on the nature and character of the contract, not on the situs of its performance or execution. Characterizing all wireline service contracts as non-maritime will provide for the uniform application of law to these contracts. To allow contracts to be characterized as maritime simply because a vessel is associated with the contract would create uncertainty in the assessment of contractual liabilities. This practice will allow the situs of the performance of a service rather than the nature of the service itself to determine the nature of a contract. Such a result is contrary to the basic principles previously espoused by this Court. Suggesting that there is no conflict to be reviewed, the respondent now prays that Petitioner's application for writ of certiorari to the United States Court of Appeals for the Fifth Circuit be denied.

REASONS WHY WRIT SHOULD BE DENIED AND ARGUMENT

A.

THE APPLICATION OF STATE LAW TO THE ODECO/DIMENSIONAL WIRELINE CONTRACT IS CONSISTENT WITH THE BASIC PRINCIPLES RELATING TO THE NON-MARITIME NATURE OF OIL AND GAS ACTIVITIES, AND TO THE CHARACTERIZATION OF CONTRACTS PERTAINING TO SUCH ACTIVITIES.

A review of the Fifth Circuit's application of state law to a contract for wireline services between ODECO and Dimensional is unnecessary in light of prior decisions of the United States Supreme Court.[2] Additionally, the Court must not be misled by Petitioner's assertion that *McDermott International, Inc. v. Wilander*[3] mandates a review of the Fifth Circuit's decision.

The Supreme Court early on focused on *the nature of the service being rendered pursuant to a contract* in order to classify the character of such contract. In *North Pacific S.S. Company v. Hall Brothers Marine Railway and Shipbuilding Company*[4] Justice Pitney stated that "it must be taken to be the settled law of this court that while in civil jurisdiction of the admiralty in matters of tort depends on locality, ..., in matters of contract it depends upon the subject matter, the

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[2]*North Pacific S.S. Company v. Hall Brothers Marine Railway and Shipbuilding Company,* 249 U.S. 119, 39 S.Ct. 221, 63 L.Ed. 510 (1919); *Herb's Welding, Inc. v. Gray,* 470 U.S. 414, 105 S.Ct. 1421, 84 L.Ed. 2d 406 (1985).

[3]*McDermott International, Inc. v. Wilander,* 498 U.S. _____, 111 S.Ct. 807, 112 L.Ed. 2d 866 (1991).

[4]249 U.S. 119, 39 S.Ct. 221, 63 L.Ed. 510 (1919)

nature and character of the contract..." Justice Pitney further explained that it mattered not that ship repairs were performed on dry dock instead of on water. The nature of services being performed remains constant regardless of where such services are rendered. It is *a fortiori* that if a maritime activity remains maritime although performed on land, then by uniform application of this rule of law, a non-maritime activity should *not* become maritime simply because it is performed on a vessel.

Petitioner's introductory characterization of the chartered course of this Court from *Kossick v. United States Fruit Co.*[5] *to Wilander, supra,* fails to consider this Court's dictates in *Herb's Welding, Inc. v. Gray.*[6] In *Herb's Welding*, this Court ruled that offshore exploration and development of oil and gas is inherently non-maritime, and that the nature of this activity is not significantly altered by the marine environment. This Court pointed out that services in association with the exploration and development of oil and gas are as easily performed on land as they are on water. Wireline services are peculiar to the oil and gas industry, and therefore, are no exception to this rule.

For the purpose of analogy, the Petitioner cites *Wilander,* supra, where the Supreme Court ruled that an employee is not precluded from seaman's status simply because he did not perform transportation related functions on the vessel in which he was working. Petitioner then expands on this narrow holding regarding seaman status to propose that the character of a contract should be determined by the extent to which the services provided by the contract contribute to the function of the vessel or to the accomplishment of its mission. However, Petitioner's analogy is incomplete in that it ignores the second criteria by

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[5]365 U.S. 731, 81 S.Ct. 886, 6 L.Ed. 2d 56 (1962).

[6]470 U.S. 414, 105 S.Ct. 1421, 84 L.Ed. 2d 406 (1985).

which seaman's status is determined. This second criteria requires that an employee seeking seaman's status must either have been permanently assigned to, or performed a substantial amount of work aboard a vessel or fleet of vessels.[7] Mere incidental association with a vessel does not a seaman make.[8] To complete Petitioner's analogy would require that the services provided pursuant to a contract be more than incidentally related to the vessel on which such services are rendered.[9]

There is no such relationship between a vessel and a contract for wireline services, especially under the facts of this case. It is important to note that ODECO occupied the position of both the operator and the drilling contractor for the development of the well in question. It is not by accident that Petitioner points out the various subsidiaries of ODECO in Footnote 1 of its writ application. In the traditional offshore scheme of developing a well, both the drilling contractor who supplies the jack-up vessel, and the wireline company are independent contractors of the operator. In this case, ODECO's dual status as both *operator* and *drilling contractor* is the exception in today's oil and gas industry. The Court's analysis should focus on ODECO's status as the *operator* because it is in this capacity that ODECO contracted with Dimensional in this case. If ODECO's jack-up

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[7] *Offshore Oil Company v. Robison*, 266 F.2d 769 (5th Cir. 1959).

[8] *Ross v. Mobil Oil Corp.*, 474 F.2d 989 (5th Cir. 1973); cert denied 414 U.S. 1012, 94 S.Ct. 378, 38 L.Ed. 2d 250 (1973); *Stokes v. B.T. Oilfield Services, Inc.* 617 F.2d 1205 (5th Cir. 1980).

[9] ODECO's effort to avail itself of *Wilander* is an attempt to draw this Court's attention away from its proper focus by the application of an inappropriate standard. By an exercise in legal contortion, ODECO has suggested to this Court that its ruling in *Wilander* mandates a finding that the Fifth Circuit's analysis is incorrect. The premise of this obfuscation of legal principles regarding seaman status and maritime contracts is misguided.

vessel had been chartered to an operator other than ODECO, there would be no contract between the vessel owner and the wireline company. The operator employs the wireline services to develop the well and produce oil and gas. The fact that the operator is also the vessel owner should in no way influence the characterization of the wireline services for which this contract was entered.

ODECO, as the operator, contracted with Dimensional for wireline services. ODECO, as the drilling contractor, supplied the jack-up vessel. The operator's interest was in the well itself, not in the fulfillment of a vessel's mission. In order to promote its interest in the well, ODECO, as operator, entered into a Master Service Contract with Dimensional pursuant to which ODECO issued a work order for wireline services. Nowhere in the master agreement was there any mention of the Ocean Conquest, nor was it contemplated by Dimensional that wireline services were being provided for the completion of a vessel's mission.

Wireline service is an activity performed in the well bore and is exclusively associated with the exploration and development of oil and gas, whether provided on dry land or on navigable waters. The objective of such services is to assist in the exploration and development of oil and gas. The fact that a vessel's mission was to drill the well in which the wireline services are performed is of no consequence to the wireline contractor. The mere fact that Dimensional performed wireline services on the Ocean Conquest did not change the character of those services.

A contract for wireline services is no more maritime in nature than is a contract to construct a stationary platform. Although both may contemplate the use of a vessel to complete the activity, the subject matter of the contract has no direct relationship with the traditional subjects of maritime law. It is fundamental that the mere inclusion of

maritime obligations in a mixed contract does not, without more, bring non-maritime obligations within the pale of admiralty law.[10] The Court in *Union Texas Petroleum Corporation v. PLT Engineering, Inc.*[11] found the same to be true for a contract to construct a pipeline on the seabed of the Gulf of Mexico. Although most of the work was performed off vessels, Judge John R. Brown of the Fifth Circuit found the contract to be non-maritime in nature. He wrote that "while some maritime operations were undoubtedly contemplated, the principal obligation of PLT and the subcontractors was to build the gathering line and connect it to the platform and the transmission line. The activities are not traditionally maritime. Rather they are the subjects of oil and gas exploration and production." In this case there does not exist even a mixed contract since there are no obligations in the ODECO/Dimensional contract that are maritime in flavor. Therefore, the Fifth Circuit's application of state law to the ODECO/Dimensional contract for wireline services is consistent with prior rulings of this Court and necessitates a denial of Petitioner's application for writ of certiorari to the United States Court of Appeals for the Fifth Circuit. Contrary to Petitioner's assertions, the Fifth Circuit's ruling herein is an effort toward consistency in its holdings rather than a diversion from uniformity.

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[10]*Laredo Offshore Constructors v. Hunt Oil Co.*, 754 F.2d 1223 (5th Cir. 1985).

[11]895 F.2d 1043 (5th Cir. 1990).

B.

THE APPLICATION OF STATE LAW TO A CONTRACT FOR WIRELINE SERVICES WOULD PROVIDE CERTAINTY IN A PARTY'S ABILITY TO PRE-ASSESS ITS POTENTIAL CONTRACTUAL LIABILITIES AND WOULD NOT IN ANY WAY AFFECT THE UNIFORMITY OR SUPREMACY OF MARITIME LAW.

With new technology and the rapid growth of the oil and gas industry came a body of law that has proven to be somewhat less than crystal clear. However, it has been the ever-constant objective of both Congress and the Judiciary to strive for certainty and uniformity in the application of the law. The Fifth Circuit helped perpetuate this objective in its decision in *Offshore Oil Company v. Robison.*[12] The criteria for seaman's status formulated by the court in *Robison* prevents a seaman from walking out of his status simply by stepping off the vessel on which he was employed.[13] The formula provides certainty to status for those who truly are entitled to be recognized a seaman.

Additionally, Congress sought to resolve a similar problem of "checker-board coverage" being faced by land based longshoremen when it amended the Longshore and Harbor Workers' Compensation Act[14] in 1972. Prior to 1972, the Act reached only those accidents occurring on navigable waters. A longshoreman or harbor worker who left the vessel in the performance of his duties often found himself outside the coverage of the Act. The 1972 amendment expressly

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[12]266 F.2d 769 (5th Cir. 1959).

[13]*Bertrand v. International Mooring and Marine, Inc.*, 700 F.2d 240 (5th Cir. 1983); cert. denied 464 U.S. 1069, 104 S.Ct. 974, 79 L.Ed. 2d 212 (1984).

[14]33 U.S.C.A. §901 et. seq.

extended coverage to "adjoining areas" adjacent to the water, where maritime workers would be likely to spend a large part of their working lives, thereby eliminating the fortuitous element of "locality" from the longshoreman's compensatory fate.

The Supreme Court is now being asked to review a decision that effectively provides to contracting parties the same uniformity and certainty previously bestowed upon seamen and longshoremen. The United States Court of Appeals for the Fifth Circuit, in keeping with the Supreme Court's decision in *Herb's Welding, supra,* has recognized in this case that a contract for wireline services is an activity associated with the exploration and development of oil and gas, and is therefore non-maritime in nature. The Fifth Circuit further recognized that the nature of such a contract is not transformed magically to maritime simply because the contract is performed in a marine setting. To hold otherwise would only create uncertainty and disrupt the uniformity long sought to be achieved by both Congress and the Judiciary.

A pre-contract assessment of liability by both parties involved in a contract would be difficult, if not impossible, to make since wireline services are typically performed both on vessels and fixed platforms. Contractual liabilities would change from minute to minute depending on where a particular service was being rendered. The Fifth Circuit in *Thurmond v. Delta Well Surveyors*[15] recognized this potential dilemma. In *Thurmond,* the wireline services were provided to a fixed stationary well jacket from a lift boat much akin to the ODECO jack-up vessel in the instant case. The use of the vessel by the wireline contractor to fulfill its own contractual obligations was not sufficient to convince

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[15]836 F.2d 952 (5th Cir. 1988); rehearing en banc denied 844 F.2d 788 (5th Cir. 1988).

Judge Wisdom that a wireline service contract should be maritime. Much like his opinion on seaman status in *Robison*, supra, Judge Wisdom looked beyond the immediate facts of *Thurmond*, to create law that would accommodate future cases involving wireline contracts.[16]

In finding that a wireline service contract was non-maritime, the court in *Thurmond* focused on the principal obligation of the contract - that being the provision of wireline services - and not necessarily upon the furtherance of the vessel's mission. The court further explained that such an obligation to perform wireline services was peculiar to the oil and gas industry, not maritime commerce. Again, it is the exploration of oil and gas that provides purpose to the contract between ODECO and Dimensional, not the fulfillment of the vessel's mission.

A review of the Fifth Circuit's decision in this case would not be a review of an intracircuit conflict as the Petitioner suggests. None of the cases cited by Petitioner in support of this contention pertain to a contract for the provision of wireline services. In the Petitioner's strongest case authority, the Fifth Circuit in *Theriot v. Bay Drilling Corporation*[17] recognized the same principle acknowledged by the court in *Thurmond*, and now being advanced by Respondent. The court in *Theriot* stated that "whether a particular contract can be characterized as maritime depends on the nature and character of the contract, not on the situs of its performance or execution." The court further recognized that "not every contract touching incidentally on a vessel will be maritime."

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[16]This Court has looked favorably upon Judge Wisdom's analysis of oilfield related matters in the *Robison / Wilander* seaman status line of cases. The Court is asked to give the same deference to Judge Wisdom's analysis in *Thurmond*.

[17]783 F.2d 527 (5th Cir. 1986).

Additionally, there is no conflict within the Circuit because *Theriot, supra*, and this case are not analogous. *Theriot* involved the charter of a vessel. Vessel charters have always been maritime contracts. Dimensional's contract with ODECO in no way involves a vessel charter. This Court should accept this important distinction. A contract to provide oil and gas related services as its principal obligation is, in and of itself, a non-maritime activity.

Additionally, Petitioner's contention that the Louisiana Supreme Court is in conflict with the Fifth Circuit's application of state law in this case is not well founded for two obvious reasons. First, contrary to Petitioner's assertion, the issue of whether a contract for oil and gas drilling aboard a vessel in navigable waters is a maritime contract was not decided by the Louisiana Supreme Court in *Rodrigue v. LeGros.*[18] In *Rodrigue*, the Court pointed out in its per curiam opinion on application for re-hearing that the indemnitor conceded before trial, and maintained the concession in oral argument before the Supreme Court, that the contract giving rise to the dispute was indeed a maritime contract. The issue decided by the Louisiana Supreme Court in *Rodrigue* was whether the Louisiana Oilfield Anti-Indemnity Act[19] applied to maritime contracts. However, that issue is not now before this Court and need not be discussed beyond the reason stated herein.

Second, even had the indemnitor in *Rodrigue, supra,* not conceded the maritime nature of the contract, a decision by the court that the contract was maritime would not have conflicted with Fifth Circuit precedent. The contract in *Rodrigue* required that the indemnitor provide a jack-up vessel and two crew boats as its primary obligation under the

[18] 563 So.2d 248 (La. 1990).

[19] LSA-R.S. 9:2780.

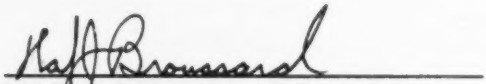
contract. The relationship of the vessels to the indemnitor's other obligations under the contract was much more than incidental in nature. A finding that such a contract is maritime in nature would come as no surprise to anyone, and, accordingly, is not in conflict with any current holdings of the Fifth Circuit.

CONCLUSION

Activities associated with the exploration and development of oil and gas are inherently non-maritime in nature and the character of such is not altered by a marine setting. Wireline services are peculiar to the oil and gas industry and are therefore non-maritime in nature. Wireline services are provided to help effectuate a successful drilling operation. This direct relationship to the exploration and development of oil and gas is present regardless of where the wireline services are rendered.

A bright line has been drawn. Wireline services are non-maritime in nature and a contract for such services is to be governed by state law. The Supreme Court can further brighten this line of certainty by denying Petitioner's application for Writ of Certiorari to the United States Court of Appeal for the Fifth Circuit.

Respectfully Submitted,



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(3)

NO. 91-747

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In the Supreme Court of the United States

OCTOBER TERM, 1991

OCEAN DRILLING & EXPLORATION COMPANY (ODECO),

Petitioner

VERSUS

DIMENSIONAL OILFIELD SERVICES, INC.,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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Petitioner respectfully files this Reply Brief to address certain contentions raised in the Brief in Opposition filed by Respondent.

STATEMENT OF THE CASE

Petitioner adopts the Statement of The Case from its Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit. Dimensional, pursuant to the terms of the contract/work order with ODECO, specifically provided services directly furthering the mission of the special-purpose vessel, OCEAN CONQUEST.

REPLY ARGUMENT

Petitioner, ODECO, respectfully submits this Reply Brief to address the erroneous contentions made by Respondent, Dimensional, in Opposition to the Petition for Writ of Certiorari.

Respondent states in opposition that the services, i.e. wireline services, performed by Dimensional onboard the OCEAN CONQUEST, were non-maritime because wireline services are "peculiar to the oil and gas industry and are therefore non-maritime in nature." Respondent cites *Thurmond v. Delta Well Surveyors*[1] and *Herb's Welding, Inc. v. Gray*[2] for that proposition. However, both *Thurmond, supra* and *Herb's Welding, supra*, are inapplicable to our situation and therefore, easily distinguishable.

Thurmond, supra, is factually distinguishable from the ODECO/Dimensional situation, yet is consistent with the myriad of case law cited in ODECO's Petition for Writ of Certiorari. *Thurmond, supra* held that the

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[1] 836 F.2d 952 (5th Cir. 1988); rehearing *en banc* denied 844 F.2d 788 (5th Cir. 1988).

[2] 470 U.S. 414, 105 S. Ct. 1421, 84 L.Ed 2d 406 (1985).

particular wireline service in that litigation was not maritime **because it did not concern the operation of a vessel.** *Thurmond, supra,* is very fact specific, and its holding should be limited to wireline services which do not concern the operation of a vessel. As noted in *Thurmond, supra* at 954, 955:

> ". . . Thurmond was not engaged in the performance of a maritime obligation, such as one relating to the navigation or operation of the barge KATHY. Indeed, when he was injured, Thurmond was standing on a small protective wooden jacket on the wellhead, a *fixed platform,* and he was opening the well valve. The wellhead was an island, a small one but an island." (emphasis added).

> "The wireline service contract between P&S and Gulf Oil did not address in any way the use of a ship."

Finally, the key factor which distinguishes *Thurmond, supra,* yet makes it consistent with all other previous case law is the following:

> "The principal obligation under this contract was to perform wireline services, *clearly a non-maritime obligation in the sense that it does not concern the operation of a vessel*". *Id.* (emphasis added).

Where wireline services or any specialty service furthers the vessel's mission and function, a maritime obligation arises under such a contract. This is specifically noted in *Thurmond, supra,* and consistently held a key factor in all cases holding that maritime obligations arise when there is a relationship between the contract and a vessel. *Thurmond, supra,* is distinguishable because the contract

and work pertained to fixed platforms, not vessels. In the instant case, however, the ODECO/Dimensional contract/work order addressed work to be performed for the OCEAN CONQUEST [*See* Appendix "E" of ODECO's Petition for Writ of Certiorari], and the work performed directly furthered the mission of the OCEAN CONQUEST.

Dimensional further cites *Herb's Welding, supra* for the proposition that offshore oil and gas exploration and development is inherently non-maritime. This interpretation is incorrect. The Supreme Court did not hold therein that oil and gas production from a **vessel** can no longer be termed maritime commerce, but held instead that not every worker performing a task in oil and gas production from **fixed platforms** is engaged in maritime employment under the 1972 amendments to the LHWCA.

The Court's holding in *Herb's Welding, supra*, that a welder on a fixed platform in Louisiana waters was not engaged in maritime employment, is clearly predicated upon the fact that the welder was working on a fixed platform, and not a vessel. As the Court observed, fixed platforms are not "even suggestive of traditional maritime affairs." *Id.* 105 S. Ct. at 1426. The Court did note, however, that "had the welder been on a **vessel**, he would have enjoyed coverage under the LHWCA," i.e., he would have been performing maritime activity. *Herb's Welding*, 105 S. Ct. 1424, note 2.

CONCLUSION

The Dimensional work, under the terms of its contract/work order with ODECO, specifically furthered the mission of the OCEAN CONQUEST. Under the terms of that contract/work order, Dimensional was certainly "doing the ship's work" as pronounced in *McDermott International, Inc. v. Wilander*[3], and most recently, *Southwest Marine, Inc. v. Gizoni.*[4]

The OCEAN CONQUEST is a special-purpose vessel, whose mission is to assist in oil and gas development. Contracts relating to work and services to such vessels give rise to maritime obligations. A close examination of the cases cited by Respondent, Dimentional, actually support ODECO's argument, and require the alication of maritime law to the contract/work order in question.

Respectfully submitted,

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[3] *McDermott International Inc. v. Wilander* ___ U.S. ___, 111 S. Ct. 807, 112 L.Ed. 2d 866, 1991 AMC 913 (1991).

[4] *Southwest Marine Inc. v. Byron Gizoni* ___ U.S. ___, 1991 WL 252870 (December 4, 1991).

PROOF OF SERVICE

I, Timothy P. Hurley, attorney for the defendant-petitioner, and a member of the bar of the Supreme Court of the United States, hereby certify that on this day I have served copies of the foregoing petition for writ of certiorari on:

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by mailing a copy thereof, postage pre-paid and addressed to their respective offices, this ____ day of _____, 1991.

_____
TIMOTHY P. HURLEY